



TREASURE STATE
RESOURCES ASSOCIATION
OF MONTANA

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TREASURE STATE RESOURCES ASSOCIATION NEWS
September, 2018

As we prepare to celebrate Labor Day

The following highly appropriate comments are excerpted from an August 2, 2018 Guest Column published in the Helena Independent Record and written by Montana AFL-CIO Executive Secretary Al Ekblad in opposition to I-186 (anti-mining initiative appearing on the November ballot)

He wrote:

Montana's working families are what make Montana the last best place. It's a place where you can find a good job and a great quality of life. Workers know there is a common ground between protecting dignified jobs with wages that support a family and a clean environment for all to enjoy.

As a reminder, TSRA's mission statement calls for us to "promote and enhance the Montana Way of Life through responsible resource development". Thank you to all our TSRA members who work to create, perform and maintain jobs that help sustain working families - we're all in this together.

May you and your "working" family enjoy a safe and happy holiday weekend.

Judge shifts legal brawl, revives Waters of the US in 26 states

Source: E & E News, August 16, 2018 By: Ariel Wittenberg and Amanda Reilly

The Obama-era Clean Water Rules became the law in 26 states today as a federal judge in South Carolina issued a nationwide injunction on the Trump administration's delay of the regulation that defines what wetlands and waterways get federal protection.

The injunction targets the Trump administration's February order suspending the rule while the EPA and the Army Corps of Engineers worked up a new version.

The Southern Environmental Law Center sued on behalf of several environmental groups, saying the administration rushed the rulemaking and violated the Administrative Procedure Act.

U.S. District Judge David Norton for the District of South Carolina agreed with the greens, saying the administration failed to seek public comment on the substance of the rule or the implications of delaying the regulation by two years.

"Certainly, different administrations may implement different regulatory priorities, but the Administrative Procedure Act requires that the pivot from one administration's priorities to those of the next be accomplished with at least some fidelity here. The court cannot countenance such a state of affairs." ...

WOTUS now applies in California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, and Washington... **Injunctions of WOTUS from district courts in North Dakota and Georgia means the rule will not be revived (under this ruling) in 24 states (including Montana).**

The U.S. District Court for the Southern District of Texas is also considering legal challenges to WOTUS. Louisiana, Mississippi and Texas, along with farm industry groups, have asked the judge in that case to halt the rule nationwide, meaning the Obama-era rule could be stayed in still more states.

Additional Source: E & E News, August 17, 2018 By: Ariel Wittenberg

WOTUS redefined which wetlands and small waterways are protected by the Clean Water Act. Industry groups and states have argued that the regulation amounted to federal overreach.

The American Farm Bureau filed a notice in the above-referenced matter noting that

the “now-piecemeal application of the rule now compounds these far-reaching and deleterious effects.”

“Plaintiffs members must sort out which regulatory regime applies to which activities under which circumstances – a particularly troubling prospect given that their members manage construction, extraction, and farming projects across multiple states, creating conflicting permitting obligations,” the group wrote.

Lawmakers see uphill fight for WOTUS redo

Source: E & E News, August 21, 2018 By: Geof Koss

Key senators signaled yesterday that the fate of the Obama-era Clean Water Rule will remain in the hands of the federal courts rather than Congress, given the long odds of a legislative solution to the legal imbroglio....In the 115th Congress, a policy rider to shield a Trump administration rewrite from the requirements of the Administrative Procedure Act has been in the mix in the appropriations process but has failed to make it into any of the spending bills that became law...

Senate Environment and Public Works Chairman John Barasso (R-Wyo.) said he was “taking a look at options” in response to the court’s order.

But several senators suggested that it would be an uphill fight for Congress to pass legislation on the issue.

Sen. Mike Lee (R-Utah) in June forced a vote on an amendment to the Army Corps of Engineers spending bill that would have terminated the rule, but the chamber voted 62-34 to table Lee’s rider to honor the bipartisan agreement not to push controversial amendments to spending bills. During that debate, Majority Leader Mitch McConnell (R-Ky.) reluctantly urged senators to reject Lee’s amendment, which he noted he otherwise would have supported.

Sen. Lisa Murkowski (R-Alaska), who chairs the Appropriations subcommittee that funds EPA, said a similar effort to address the court’s decision would likely meet the same fate....

Murkowski suggested the Senate’s water infrastructure bill could be another vehicle for dealing with the Clean Water Rule but noted that the measure is “still stuck” behind Sen. Richard Burr’s demand for a vote to permanently reauthorize the Land and Water Conservation Fund...

Taking up the Clean Water Rule fight in farm bill conference talks may also further bog down those already complicated negotiations, Murkowski noted. “I don’t know if there’s room there,” she said.

Senate Agriculture Chairman Pat Roberts (R-Kan.) did not appear to relish the idea of dealing with the water rule in the farm bill.

EPA Plans Rule Rollback

Trump Administration to abandon Obama's Clean Power Plan

Source: Helena Independent Record August 21, 2018 By: Matthew Daly, AP

The Trump Administration will roll back the centerpiece of President Barack Obama's efforts to slow global warming, the Clean Power Plan that restricts greenhouse gas emissions from coal-fired plants....

...The new plan *gives* states broad authority to determine how to restrict carbon dioxide and other greenhouse gas emissions that contribute to global warming...The plan by the Environmental Protection Agency also would let states relax pollution rules for power plants that need upgrades...

Trump also directed Energy Secretary Rick Perry to take steps to bolster struggling coal-fired and nuclear power plants to keep them open, warning that impending retirements of "fuel-secure" power plants that rely on coal and nuclear power are harming the nation's power grid and reducing its resilience...

However,

New Coal Plan Gets Mixed Reviews

Industry-friendly pollution rules may not save Colstrip

Source: Billings Gazette By: Tom Lutey

President Donald Trump's plan to replace Obama-era air pollution rules with coal-friendly policies got a mixed reception by Montana officials uncertain what the changes would mean for the Colstrip Power Plant...Though never carried out, the Obama rules called for dramatically cutting carbon dioxide....Montanans had expected the Obama rules to finish off Colstrip Power Plant ... as the state cut carbon dioxide emissions 47 percent to comply with federal law... The new "Affordable Clean Energy Rule" would allow states to ease up on pollution regulations....EPA said the new rules would force carbon dioxide levels down 34 percent nationally , but without shuttering power plants....

But,

(the new plan) doesn't really change the underlying pressures on the utilities, and particularly Colstrip, that are facing things like customers calls to divest in coal (*according to Seth Feaster, energy data analyst for the Institute for Energy Economics and Financial Analysis*) ...

Voters in Washington state, which uses a significant portion of Colstrip power, will decide in the general election whether to impose a carbon tax on coal power...the Spokane City Council *recently* voted to be 100 percent carbon-power free in 12 years. The city is in the territory of Avista Corp., a Colstrip owner....Avista and Colstrip's largest shareholder, Puget Sound Energy, have both agreed to be financially ready by 2027 to shutter Colstrip.

In Oregon, Colstrip co-owners Portland General Electric and PacificCorp are required by law to stop supplying coal power to customers in the 2030's.

Will Washington State Voters Make History on Climate Change?

Source: [The Atlantic](#) August 15, 2018 By: Robinson Meyer

This November, voters in Washington State may do what no group of people – in or outside of the United States – has done before.

They will vote on whether to adopt a carbon fee, an aggressive policy to combat climate change that charges polluters for the right to emit carbon dioxide and other potent greenhouse gases...If the measure passes, Washington will make history, becoming not only the first state in the union to adopt a type of policy called a carbon tax – but also the first government anywhere to do so by ballot referendum...

It requires major polluters like fossil fuel companies to pay \$15 for every ton of carbon dioxide they release into the atmosphere. The state estimates that this levy would generate roughly \$2.2 billion in its first five years.

Among other things, Initiative 1631 would then invest this windfall into a new fund to support projects that would accelerate the state's transition away from fossil fuels, like public-transit developments, energy-efficiency upgrades, and new wind- and solar – power plants...

Initiative 1631 is a "carbon tax" -- at least as defined by the World Bank, the Brookings Institution, and, well, the Carbon Tax Center. Since it tries to internalize the costs of climate change into the economy...

But Initiative 1631 enacts a carbon "fee", not a tax, citing Washington State law. As a fee, its revenue cannot be spent on any government expenses, like public education or welfare. Every cent raised by Initiative 1631 must go toward solving climate-related problems or protecting the state's environment.

The fee will be charged directly to some of the state's largest polluters. But Dana Bieber, a spokeswoman for the opposition campaign, argues that there's "no doubt" these companies would pass along its costs to consumers. "Regardless of what you say about a carbon fee or a carbon tax, it's intended to be paid by consumers," ...

Carbon prices are usually designed to raise the cost of fossil fuels in order to goad consumers into using them less. Under Initiative 1631, the price of gas would likely rise by 13 cents a gallon in 2020, and the price of home-heating oil would rise by 15 cents a gallon, according to the nonpartisan think tank Resources for the Future.

The initiative's supporters say that – in a worst case scenario – the policy will cost most Washingtonians about \$10 a month. And they contend that companies will not succeed in transferring every cent of costs to consumers...

Initiative 1631 does not cover every major carbon polluter in the state. It exempts manufacturing industries that sell much of their products abroad – which is to say, the state's enormous aerospace industry, and especially the state's largest employer, Boeing. Alcoa, a major aluminum manufacturer is exempt too.

The proposal also exempts the Centralia coal plant, Washington's only operating coal-fired plant.

Editors note: And of importance to Montana...

Any coal-generated electricity imported into the state through the power grid will be subject to the fee. About one-sixth of Washington's electricity comes from coal plants...

Want to learn more?

Montana Energy and Telecommunications Interim Committee Meets Monday, September 10, 2018

Committee will hear updates on Colstrip and the SJ 5 Coal Study

ETIC will meet September 10th at 8:00 am. in Room 172 of the State Capitol for the last time this interim to discuss final approval of bill drafts relating to integrated resource planning and small water and sewer utility regulation. Committee members will also hear an update on the Colstrip Generating Station and the final report to the EQC on the SJ 5 Coal in Montana, Changing Times, Challenging Times Study. Discussions are likely to include some of the issues raised in the news articles highlighted above.

To get information about the ETIC Agenda and related materials go to: <http://leg.mt.gov/etic>. The meeting will also be live streamed at: <http://leg.mt.gov>

Grizzly rule-making process goes to public

Source: [Missoulian](#), August 19, 2018 By Rob Chaney

Montana Fish, Wildlife and Parks' oversight of grizzly bear recovery in the Northern Continental Divide Ecosystem officially began its public review on Friday, August 24, 2018.

If the U.S. Fish and Wildlife Service removes grizzly bears from Endangered Species Act protection, the state agency would have responsibility for ensuring that northwest Montana bear populations stay at healthy levels.

Federal officials intend to delist that recovery area by the end of this year. The FWP Commission decided to use its formal rule-making process to adopt a set of counting methods and requirements for measuring that population...The public comment period extends through October 26. FWP staff then will review the responses and propose any amendments to the plan to the FWP Commission. Adoption of the rule could come by the end of December.

Additional Source: MT. Fish, Wildlife and Parks

The rule pledges FWP will be at least 90 percent sure the grizzly population in the Northern Continental Divide Ecosystem stays at or above 800 bears if federal land managers remove Endangered Species Act protections for them. FWP says this amounts to maintaining a population of about 1,000 animals.

For a copy of the proposed rule go to: http://fwp.mt.gov/news/publicNotices/rules/pn_0265.html

Public Meetings on the draft rule are scheduled as follows:

September 18 – Great Falls, Great Falls College – MSU, 2100 16th Avenue S., 6:30 pm.

September 19 – Conrad, High School, 308 S. Illinois St., 6:30 pm.

September 26 – Missoula, Holiday Inn Downtown, 600 S. Pattee St., 6:30 pm.

September 27 – Kalispell, Flathead Valley Community College Arts and Technology Building, 777 Grandview Drive, 6:30 pm

Comments can also be submitted by mail to Grizzly Bear ARM, Wildlife Division, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701 or by e-mail to FWPGRIZZLYBEARARM@mt.gov

Court: Feds must reconsider endangered status for Arctic grayling in Montana

Source: E-News, Missoula's News Journal, August 17, 2018 By: Matthew Renda

The Ninth Circuit ruled Friday (August 17, 2018) that the U.S. Fish and Wildlife Service incorrectly denied endangered species status to a cold-water fish living in the Upper Missouri River Basin in Montana. The panel of judges found Fish and Wildlife failed to supply evidence of increased populations of the Arctic grayling in Montana rivers and didn't properly account for climate change when it declined to list the species as endangered in 2014.

"FWS clearly stated in the 2014 finding that the number of breeding arctic grayling increased in the Big Hole River, and omitted the Dehaan study's evidence to the contrary," U.S. Circuit Judge Richard Paez wrote for the unanimous panel. "We conclude that in ignoring available data FWS acted in an arbitrary and capricious manner."

The panel ordered the agency to reconsider the listing with a fuller account of the scientific record on hand. Plaintiffs Center for Biological Diversity, Western Watersheds Project, Butte resident Pat Munday and former Montana fishing guide George Wuerthner called the ruling a major victory.

While the plaintiffs said the ruling was a positive step forward, they maintain an actual listing by Fish and Wildlife is the only way to reverse the steep habitat loss caused by extensive water diversions from the Big Hole River by farmers.

The 9th Circuit remanded the case to federal district court for further deliberations and reconsideration of FWS's listing decision. Fish and Wildlife will review the decision and formulate its next steps.

First Farm Bill Conference Committee Meeting set for September 5

Sources: AgWeek, August 21, 2018 by Barry Amundson and E&E News, August 21 and August 24, 2018 by Marc Heller

The conferees from the U.S House and Senate will try to iron out differences between their two bills beginning with their first scheduled meeting on September 5th. There are nine senators and 47 House members on the conference committee.

Crop insurance subsidies, which usually unite farm-state lawmakers, aren't quite settled...though the two versions preserve the programs and aren't far apart on details.

On conservation issues, both the House and Senate versions would keep funding at about the same level as that approved in the 2014 bill. But they take different approaches to some programs that affect Montana. The House proposed to eliminate the Conservation Stewardship Program and to put some savings into the Environmental Quality Incentives Program (*the nation's two primary working lands conservation programs*). Both programs pay farmers to undertake measures that prevent erosion and pollution of streams. The Senate bill would keep both.

The two bills are split on how much to expand the Conservation Reserve Program, which pays farmers to take land out of crop production for extended periods, typically 10 years. The House version would raise the acreage cap from 24 million acres to 29 million; the Senate version would set the cap at 25 million acres.

Increasing the cap would appeal to farmers who've seen low commodity prices, as well as to sportsmen groups that like the habitat the set asides create for pheasants and other game birds. Both bills pay for the acreage increase by reducing payment rates for farmers, although the House does so more sharply.

The current 2014 farm bill expires at the end of September. According to Senate Agriculture Committee Chair Pat Roberts, the timeline for completing the farm bill is growing more urgent. If House leaders decide to finish their session earlier than planned in September, there may not be time to pass a final bill before the expiration deadline. The bill accounts for both farm and nutrition program for five years.

USDA Forest Service Announces New Strategy for Improving Forest Conditions

Source: USDA Office of Communications August 16, 2018

The U.S. Department of Agriculture (USDA) Forest Service (USFS) announced a new strategy for managing catastrophic wildfires and the impacts of invasive species, drought and insect and disease epidemics.

Specifically, a new report titled *Toward Shared Stewardship across Landscapes: An Outcome-based Investment Strategy* outlines the USFS's plans to work more closely with states to identify landscape-scale priorities for targeted treatments in the areas with the highest payoffs...

Both federal and private managers of forest land face a range of urgent challenges, among them catastrophic wildfires, invasive species, degraded watersheds, and epidemics of forest insects and disease. The conditions fueling these circumstances are not improving. Of particular concern are longer fire seasons, the rising size and severity of wildfires, and the expanding risk to communities, natural resources, and firefighters.

“The challenges before us require a new approach,” said Interim USFS Chief Vicki Christiansen. “This year, Congress has given us new opportunities to stand shoulder-to-shoulder with state leaders to identify land management priorities that include mitigating wildfire risks. We will use all the tools available to us to reduce hazardous fuels, including mechanical treatments, prescribed fire, and unplanned fire in the right place at the right time, to mitigate them.”

A key component of the new strategy is to prioritize investment decisions on forest treatments in direct coordination with states using the most advanced science tools. This allows the USFS to increase the scope and scale of critical forest treatments that protect communities and create resilient forests.

The USFS will also build upon the authorities created by the 2018 Omnibus Bill, including new categorical exclusions for land treatments to improve forest conditions, new road maintenance authorities, and longer stewardship contracting in strategic areas. The agency will continue streamlining its internal processes to make environmental analysis more efficient and timber sale contracts more flexible.

The Omnibus Bill also includes a long-term “fire funding fix”, starting in 2020, that will stop the rise of the 10-year average cost of fighting wildland fire and reduce the likelihood of the disruptive practice of transferring funds from Forest Service non-fire programs to cover firefighting costs. The product of more than a decade of hard work, this bipartisan solution will ultimately stabilize the agency’s operating environment.

The report can be found at: <http://www.fs.fed.us/sites/default/files/toward-shared-stewardship.pdf>

Reminder: There’s Still Time to Comment on the U.S. Fish and Wildlife Service and NOAA Fisheries Proposed Reforms to Improve & Modernize Implementation of the Endangered Species Act

Source: Department of the Interior Press Release, July 19, 2018

Continuing efforts to improve how the Endangered Species Act (ESA) is implemented, the U.S. Fish and Wildlife Service and National Oceanic Atmospheric Administration (NOAA) Fisheries has proposed revisions to certain regulations to ensure clarity and consistency. The changes incorporate public input, best science and best practices to improve reliability, regulatory efficiency and environmental stewardship...

The proposed rules are available at:

https://www.fws.gov/endangered/improving_ESA/regulation-revisions.html

They were published in the *Federal Register* on **July 25, 2018**, triggering a 60-day comment period. Comments are due by **September 24, 2018** and must be posted on <http://www.regulations.gov>

Upcoming Events/Dates

September 6-7, 2018	Montana Wood Products Association Hilton Garden Inn, Missoula, MT
September 10, 2018	Energy and Telecommunications Committee State Capitol, Helena, MT
September 10-11, 2018	Water Policy Interim Committee State Capitol, Helena, MT
September 12-13, 2018	Environmental Quality Council State Capitol, Helena, MT
September 13, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
September 14, 2018	MT. Sage Grouse Oversight Team State Capitol, Helena, MT
November 7-10, 2018	MT Farm Bureau Federation Convention Double Tree and Northern Hotels, Billings, MT
November 19, 2018	Revenue and Transportation Interim Committee State Capitol, Helena, MT
December 5, 2018	Montana Taxpayers Association Annual Meeting Radisson Colonial Hotel, Helena MT
December 11-13, 2018	Montana Stockgrowers Association Convention Double Tree and Northern Hotels, Billings, MT
January 7, 2019	Montana Legislative Session Convenes
January 7-8, 2019	Montana Chamber Days at the Capitol
January 8, 2019	TSRA Legislative Showcase, Delta Colonial Hotel, Helena

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